

HOUSE BILL No. 1265

DIGEST OF INTRODUCED BILL

Citations Affected: IC 14-8-2; IC 14-37; IC 32-23-7.

Synopsis: Coal bed methane property. Requires the natural resources commission to: (1) regulate coal bed methane wells; (2) establish alternative spacing, unit, and bonding requirements for coal bed methane wells; and (3) adopt rules to regulate coal bed methane production. Makes findings concerning coal and coal bed methane. Defines "coal bed methane". Redefines "commercially minable coal resource" for purposes of oil and gas drilling statutes, and allows an owner or lessee of coal to file an affidavit identifying a commercially minable coal resource. Provides for regulation of coal bed methane wells and other gas wells in a similar manner. Requires the division of oil and gas (division) to post on its web site applications for coal bed methane permits, prohibits issuance of a permit less than 30 days after the posting, and establishes other permit issuance criteria. Allows the division to require an owner or operator to modify the location for the drilling of a well for oil and gas purposes and requires an owner or operator to provide notice of the intent to drill under certain circumstances. Establishes coal seam protection requirements with respect to producing oil and gas wells. Adjusts the requirements for an affidavit used to determine if a commercially minable coal resource is present in an area for which a permit application has been filed. Establishes plugging requirements for areas underlain by commercially minable coal resources. Allows an owner or operator of a coal mine to burn by flares coal bed methane under certain circumstances. Provides for the establishment of an estate in land with respect to coal bed methane comparable to an estate that may be established under current law with respect to oil and gas. Limits the exercise of rights in certain

(Continued next page)

Effective: July 1, 2010.

Battles

January 12, 2010, read first time and referred to Committee on Commerce, Energy, Technology and Utilities.



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circumstances under a coal bed methane estate if the exercise affects miner safety or coal resources. Establishes relative rights between a coal estate in land and a coal bed methane estate in land. Provides that certain oil and gas statutes do not apply to methane ventilation governed under an approved federal Mine Safety and Health Administration coal mine ventilation plan. Repeals provisions concerning coal seam protection requirements.

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Introduced

Second Regular Session 116th General Assembly (2010)

PRINTING CODE. Amendments: Whenever an existing statute (or a section of the Indiana Constitution) is being amended, the text of the existing provision will appear in this style type, additions will appear in **this style type**, and deletions will appear in ~~this style type~~.

Additions: Whenever a new statutory provision is being enacted (or a new constitutional provision adopted), the text of the new provision will appear in **this style type**. Also, the word **NEW** will appear in that style type in the introductory clause of each SECTION that adds a new provision to the Indiana Code or the Indiana Constitution.

Conflict reconciliation: Text in a statute in *this style type* or ~~this style type~~ reconciles conflicts between statutes enacted by the 2009 Regular and Special Sessions of the General Assembly.

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HOUSE BILL No. 1265

A BILL FOR AN ACT to amend the Indiana Code concerning natural and cultural resources.

Be it enacted by the General Assembly of the State of Indiana:

- 1 SECTION 1. IC 14-8-2-42.2 IS ADDED TO THE INDIANA CODE
2 AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE JULY
3 1, 2010]: **Sec. 42.2. "Coal bed methane", for purposes of this**
4 **chapter, IC 14-37-3-14.5, and IC 14-37-11-3, means gaseous**
5 **substances of whatever character lying within or emanating from:**
6 **(1) unmined coal seams, either naturally or as a result of**
7 **stimulation of the coal seam;**
8 **(2) the void created by mining out coal seams; or**
9 **(3) the gob created by longwall or other extraction methods of**
10 **coal mining.**
11 SECTION 2. IC 14-8-2-47 IS AMENDED TO READ AS
12 FOLLOWS [EFFECTIVE JULY 1, 2010]: **Sec. 47. (a) "Commercially**
13 **minable coal resource", for purposes of IC 14-37, means a seam of coal**
14 **that:** ~~is~~
15 **(1) can be mined using generally accepted underground**



practices and suitable equipment; and

(2) consists of coal in sufficient quantities and of sufficient quality to be commercially saleable.

(b) The term includes a seam of coal to which one (1) or more of the following apply:

(1) The seam is:

(A) associated with an underground mine permitted under IC 14-34; and

(B) specifically intended to be mined under the permit.

(2) The seam is associated with an inactive underground mining operation at which mining operations:

(A) have temporarily ceased; and

(B) are anticipated to be resumed by the person with the right to develop the seam.

(3) The seam is identified as a commercially minable coal resource by the owner or lessee of the seam by a map accompanied by an affidavit that:

(A) is filed with the division of reclamation under IC 14-37-7-8; and

(B) states that the coal in the seam is being held for later commercial production.

(4) The seam:

(A) is not a seam to which subdivision (1), (2), or (3) applies; and

(B) is verified by a professional geologist licensed under IC 25-17.6 or a professional engineer licensed under IC 25-31 to be:

(1) (i) at least ~~thirty-six (36)~~ **thirty (30)** inches thick; and

(2) (ii) located not more than ~~eight one thousand two hundred (800)~~ **(1,200)** feet below the surface.

SECTION 3. IC 14-8-2-317 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2010]: Sec. 317. "Well for oil and gas purposes", for purposes of IC 14-37, means a ~~hole~~ **well bore** drilled, deepened, or converted for any purpose for which a permit is required under IC 14-37. The term includes the following:

(1) An oil or a ~~natural~~ gas well.

(2) A natural gas well.

(3) A coal bed methane well.

~~(2)~~ (4) A Class II well.

~~(3)~~ (5) A structure test well.

~~(4)~~ (6) A well used for the sole purpose of supplying water for the secondary recovery of petroleum resources.

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(5) (7) An underground gas storage well or underground gas storage observation well.

SECTION 4. IC 14-37-0.5 IS ADDED TO THE INDIANA CODE AS A NEW CHAPTER TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2010]:

Chapter 0.5. Findings

Sec. 1. (a) The general assembly makes the following findings:

(1) Coal and coal bed methane from coal seams are important natural resources in Indiana and should be:

(A) protected from waste; and

(B) produced in a manner that:

(i) is fair to those who own the resources; and

(ii) is safe for coal miners and the public.

(2) If coal and the coal bed methane absorbed in the coal are owned by different entities with different economic interests, there is an enhanced risk of:

(A) waste;

(B) unfair destruction of correlative property rights; and

(C) diminished mine safety.

(3) The positive impact of coal mining to the state is currently much greater than that of coal bed methane production, and the resource of coal is much more valuable to the state than the resource of coal bed methane.

(4) Commercial recovery of coal bed methane should be undertaken in a manner to:

(A) protect and preserve:

(i) the environment; and

(ii) coal from waste and for future mining; and

(B) ensure the maximum recovery of coal.

(b) Among the purposes of this article are the following:

(1) To enhance the state's energy security and reliability.

(2) To protect the state's economic resources.

(3) To ensure fair development opportunities for natural resource owners.

(4) To protect the environment.

(5) To enhance public and workplace safety by:

(A) protecting coal seams from damage by coal bed methane extraction that:

(i) results in the loss of the coal; or

(ii) makes the coal uneconomic to mine;

(B) protecting the environment by reducing the impact of surface activities associated with natural resources

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1 extraction; and

2 (C) protecting coal mines, coal miners, and the public from
3 unsafe conditions.

4 SECTION 5. IC 14-37-1-5 IS ADDED TO THE INDIANA CODE
5 AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY
6 1, 2010]: **Sec. 5. This article does not apply to methane ventilation
7 governed under an approved federal Mine Safety and Health
8 Administration coal mine ventilation plan.**

9 SECTION 6. IC 14-37-3-14.5 IS ADDED TO THE INDIANA
10 CODE AS A NEW SECTION TO READ AS FOLLOWS
11 [EFFECTIVE JULY 1, 2010]: **Sec. 14.5. The commission shall:**

12 (1) regulate coal bed methane wells and compliance with
13 IC 32-23-7-10 and IC 32-23-7-11; and

14 (2) establish alternative spacing, survey, unit, and bonding
15 requirements for coal bed methane wells.

16 SECTION 7. IC 14-37-4-8 IS AMENDED TO READ AS
17 FOLLOWS [EFFECTIVE JULY 1, 2010]: **Sec. 8. (a) Except as
18 provided in section 9 of this chapter and subject to subsections (b)
19 and (c), if an applicant for a permit complies with:**

20 (1) this article; and

21 (2) the rules adopted under this article;

22 the commission shall issue a permit.

23 (b) The division shall post on the web site maintained by the
24 division a listing of each complete permit application under this
25 chapter with respect to coal bed methane. The posting must include
26 at least the following:

27 (1) The location, type, and depth of each proposed well.

28 (2) The coal seam affected by each proposed coal bed methane
29 well.

30 (c) The division may not issue a permit under this chapter until
31 all of the following requirements are satisfied:

32 (1) At least thirty (30) days have elapsed after the posting of
33 the listing of the permit application under subsection (b).

34 (2) The division has taken into consideration any comments
35 received during the period referred to in subdivision (1) from
36 a person interested in the future minability of a commercially
37 minable coal resource.

38 (3) The applicant has submitted to the director documentation
39 demonstrating that the commercially minable coal seam
40 outside the coal bed methane production area is protected
41 adequately for future underground mining.

42 (4) The applicant has submitted to the director documentation

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of the coal owner acknowledging that the coal bed methane production may render the owner's coal unminable.

(5) The director has issued a finding that the requirements of subdivisions (1) through (4) have been met.

SECTION 8. IC 14-37-7-3.5 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2010]: Sec. 3.5. (a) The division may require an owner or operator to make reasonable modifications to the specific location for the drilling of a well for oil and gas purposes as required by this section if the modifications:

(1) are necessary to protect commercially minable coal resources;

(2) do not violate the drilling unit, well spacing, or other requirements of this article; and

(3) do not result in waste.

(b) If an owner or operator proposes to drill a well for oil and gas purposes:

(1) on land within the permit boundaries of an active underground mine permitted under IC 14-34;

(2) on land underlaid by an inactive underground mine; or

(3) on land:

(A) associated with a mine referred to in subdivision (1) or

(2); and

(B) on which a commercially minable coal resource is located;

the owner or operator shall provide notice of the intent to drill the well to the permittee of the mine under IC 14-34 or, in the case of an inactive underground mine, to the person that has the right to develop the coal resource.

(c) Not more than fifteen (15) days after receipt of the notice required by subsection (b), the permittee of the mine under IC 14-34 or other person with the right to develop the coal resources shall determine in writing whether the specific location selected for the drilling of the well is likely to result in either or both of the following:

(1) A significant diminution of the volume of coal ultimately to be recovered from the underground mine.

(2) Endangerment of the health and safety of miners.

(d) A person that makes an affirmative determination under subsection (c) shall:

(1) promptly provide a copy of the determination to the owner or operator and the director; and

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(2) identify alternative well locations that would:

(A) reduce or avoid diminution of the volume of coal ultimately to be recovered from the underground mine;

(B) eliminate the likelihood of endangerment of the health and safety of miners;

(C) not violate the drilling unit, well spacing, or other requirements of this article; and

(D) not result in waste.

(e) If:

(1) the permittee of a mine under IC 14-34 or other interested person; and

(2) the owner or operator;

are unable to agree on a suitable location for the well that is not likely to result in endangerment of the health and safety of miners, the director shall conduct an informal hearing under IC 14-37-3-16 to gather information to identify an alternative well location as described in subsection (d)(2).

(f) If:

(1) the director does not after the informal hearing under subsection (e) identify a suitable location for the well that is not likely to result in endangerment of the health and safety of miners; and

(2) the location for the well for which notice was provided under subsection (b) is not likely to result in endangerment of the health and safety of miners;

the owner or operator is not required to modify the location of the proposed well and may proceed with the submittal of the permit application to the department under this article.

SECTION 9. IC 14-37-7-4 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2010]: Sec. 4. (a) If a well is drilled and completed as a producing well

(1) through a commercially minable coal resource, and

(2) within an area for which a mine plan is filed with the commission but for which an intermediate string is not required under section 3 of this chapter;

an owner or operator shall set a production string of casing properly centralized and cemented and documented by a sonic cement bond-variable density log:

(b) An owner or operator must provide at least forty-eight (48) hours notice to the:

(1) department; and

(2) person who filed the mine plan;

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before commencing logging operations under this section.

(c) The person who filed the mine plan is entitled to:

- (1) be present during the logging operations; and
- (2) examine the log.

to ensure that adequate cement is placed behind the casing in the area between fifty (50) feet below and one hundred (100) feet above the commercially minable coal seam.

(b) On completion of the coal seam protection requirements of subsection (a), the owner or operator shall prepare and submit an affidavit to the director that includes the following:

- (1) Verification that the commercially minable coal resource was protected as required by subsection (a).
- (2) A cross-section drawing of the well showing the location of each centralizer in the completed well.
- (3) Evidence that adequate cement was circulated behind the casing as required by subsection (a).

(c) The director may require the owner or operator to run a cement bond-variable density log or other similar logging procedure to determine the adequacy of cement bonding if the director believes either or both of the following:

- (1) That adequate cement has not been circulated to protect the commercially minable coal resource.
- (2) That centralizers were not placed at locations necessary to properly centralize the casing through the coal seam.

(d) The commission shall determine the adequacy of cement bonding. If there is a bonding failure the logging procedure under subsection (c) indicates that adequate cement bonding has not occurred between fifty (50) feet below and one hundred (100) feet above the commercially minable coal resource, the owner or operator shall perform remedial action, as ordered by the ~~commission~~, director, that results in adequate bonding.

(e) The owner or operator shall submit to the division and the owner or operator of the commercially minable coal resource, if known, the affidavit required by subsection (b) and copies of any logs required by subsection (c) not later than thirty (30) days after ~~commencing~~ the later of:

- (1) the date of completion of the well; or
- (2) the date of completion of any logging operations; the owner or operator shall provide the department and the person who filed the mine plan with a copy of the sonic cement bond-variable density log procedure under subsection (c).

(f) If the director finds that coal seam protection measures taken

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by an owner or operator did not adequately protect the coal seam during coal mining operations in close proximity to a well for which an affidavit is submitted under subsection (b), the owner or operator shall perform additional remedial action to ensure protection of the coal resource and the health and safety of miners. Significant water, gas, or other fluid movement into the underground mine that is transmitted through the annular space outside the protective casing string is evidence of a failure to adequately protect the coal seam.

(f)(g) Preparation of the log and any remedial action required under this section are at the expense of the owner or operator.

SECTION 10. IC 14-37-7-8 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2010]: **Sec. 8. (a) The owner or lessee of coal or another interested person may file with the division of reclamation an affidavit that:**

(1) identifies by map:

(A) coal that the owner or lessee holds for later commercial production;

(B) coal that is in an area targeted for later commercial production; and

(C) the coal seam or seams of interest; and

(2) states that the coal:

(A) can be mined using generally accepted underground mining practices; and

(B) is of sufficient quantity and quality to be commercially saleable.

(b) All coal in an area designated under subsection (a) is considered a commercially minable coal resource.

(c) An affidavit referred to in subsection (a) may be made before applying for permits for the actual mining of the commercially minable coal resource. The division of reclamation shall:

(1) keep the affidavit and map confidential; and

(2) use the affidavit and map solely for determining if a commercially minable coal resource is present in an area for which a permit application has been filed under IC 14-37.

(d) Upon receipt of a permit application referred to in subsection (c)(2), the division shall request the division of reclamation to determine if the proposed well location is in an area underlain by coal identified in subsection (a).

(e) The division of reclamation shall report its determination under subsection (d) in writing to the division.

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SECTION 11. IC 14-37-8-2 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2010]: Sec. 2. (a) Plugging methods must be approved by the commission and must permanently confine all oil, natural gas, and water in their original strata.

(b) Except as provided in subsection (c), for plugging of areas underlain by commercially minable coal resources, an expanding cement plug must be installed at least two hundred (200) feet below the lowest minable coal seam to one hundred (100) feet above the highest minable coal seam.

(c) Plugging standards more stringent than the standards established in subsection (b) apply to the extent that the federal Mine Safety and Health Administration requires the more stringent standards in order to permit mining through the area of the plugged well.

(d) For areas to which subsection (b) does not apply, mud-laden fluid, cement, or mechanical plugs ~~shall~~ must be used singly or in combination.

SECTION 12. IC 14-37-11-3 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2010]: Sec. 3. The owner or operator of a coal mine may burn in flares the coal bed methane produced from a coal bed methane well if either or both of the following apply:

- (1) The burning is necessary to protect coal miners' safety.
- (2) It is not economical to market the coal bed methane.

SECTION 13. IC 32-23-7-0.3 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2010]: Sec. 0.3. As used in this chapter, "coal bed methane" has the meaning set forth in IC 14-8-2-42.2.

SECTION 14. IC 32-23-7-0.4 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2010]: Sec. 0.4. (a) As used in this chapter, "coal bed methane estate in land" means the aggregate of all rights in land that affect the coal bed methane:

- (1) in the land;
- (2) on the land;
- (3) under the land; or
- (4) that may be taken from beneath the surface of the land.

(b) The term includes the following:

- (1) The right to produce coal bed methane for commercial use or sale.
- (2) The appurtenant right to use the surface overlying the coal bed methane for coal bed methane operations.

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SECTION 15. IC 32-23-7-0.5 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2010]: **Sec. 0.5. (a) As used in this chapter, "coal bed methane production area" means the area of land determined by the operator in which multiple wells are drilled for a common production purpose.**

(b) A coal bed methane production area need not be part of a unit or other area in which production is pooled.

SECTION 16. IC 32-23-7-0.8 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2010]: **Sec. 0.8. As used in this chapter, "commercially minable coal resource" has the meaning set forth in IC 14-8-2-47.**

SECTION 17. IC 32-23-7-1 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2010]: **Sec. 1. (a) As used in this chapter, "oil and gas" means petroleum and mineral oils and gaseous substances of whatever character naturally lying or found beneath the surface of land.**

(b) The term does not include coal bed methane.

SECTION 18. IC 32-23-7-2.5 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2010]: **Sec. 2.5. As used in this chapter, "operations for coal bed methane", unless otherwise indicated by the context of this chapter, means:**

- (1) the exploration, surveying, or testing of land for coal bed methane;**
- (2) other investigation of the potential of land for coal bed methane production;**
- (3) the actual drilling or preparation for drilling of wells for coal bed methane;**
- (4) the stimulation of coal bed methane production by hydrofracturing or otherwise;**
- (5) the collection and transportation by pipeline of coal bed methane from:**

(A) the land; or

(B) nearby land that is a part of a coal bed methane production area that includes the land; or

(6) any other actions directed toward the eventual production or attempted production of coal bed methane from the land.

SECTION 19. IC 32-23-7-4 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2010]: **Sec. 4. (a) As used in this chapter, "person in interest" means:**

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(1) if used in reference to an oil and gas estate in land, the owner of a beneficial interest in the oil and gas estate in land; or

(2) if used in reference to coal bed methane, the owner of a beneficial interest in the coal bed methane estate in land;

whether the interest is held for life, for a term of years, or in fee.

(b) The term includes a lessee, licensee, or duly qualified agent of the owner.

(c) The term does not include a mortgagee or security assignee of the owner if the mortgagee or security assignee does not have a right to the control or operation of the premises for:

(1) if used in reference to an oil and gas estate in land, oil and gas; or

(2) if used in reference to coal bed methane, coal bed methane.

SECTION 20. IC 32-23-7-7 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2010]: Sec. 7. (a) This section applies to the following:

(1) Interests in oil and gas.

(2) Interests in coal bed methane.

(a) Interests in the oil and gas (b) An interest referred to in subsection (a) in, on, under, or that may be taken from beneath the surface of land located in Indiana may be created:

(1) for life;

(2) for a term of years; or

(3) in fee;

in the manner and to the extent that other interests in real estate and title are created.

(b) (c) Title to the estates specified under subsection (a) (b) may be vested in one (1) or more persons by:

(1) sole ownership;

(2) tenancy in common;

(3) joint tenancy;

(4) tenancy by the entireties; or

(5) another manner recognized under Indiana law.

(c) (d) Interests or estates specified in this section are freely alienable, in whole or in part, in the same manner as are other interests in real estate.

SECTION 21. IC 32-23-7-8 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2010]: Sec. 8. (a) This chapter does not limit the rights of parties to contract with regard to the an oil and gas estate or a coal bed methane estate in land affecting lands in Indiana:

(1) to the extent permitted by; and

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(2) in a manner consistent with;
the nature of the estate in law as specified under this chapter.

(b) This chapter ~~is intended to declare~~ **declares** the law of ~~this the~~ state with regard to the subject matter treated in this chapter as the law existed before ~~March 5, 1951~~. **July 1, 2010.**

(c) This chapter does not affect the rights or powers of any commission, board, or authority duly constituted for the regulation of the oil and gas industry **or the coal bed methane industry** in Indiana.

SECTION 22. IC 32-23-7-9 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2010]: **Sec. 9. (a) Except as provided in sections 10 and 11 of this chapter, a grant or reservation contained in an instrument that affects land in Indiana and that purports to convey or transfer an interest in the coal or the coal bed methane in, on, under, or that may be produced from beneath the surface of the land transfers the following expressed rights and privileges in addition to any other rights naturally flowing from the character of the instrument in law to the named recipient:**

(1) A person in interest in the coal bed methane estate in land may enter the land for the purpose of:

(A) exploring, prospecting, testing, surveying, or otherwise investigating the land to determine the potential of the land for coal bed methane production; or

(B) otherwise conducting operations for coal bed methane on the land;

whether or not the person is also the owner, lessee, or licensee of an owner of an interest in the surface rights in the land.

(2) A person in interest in the coal bed methane estate in land in Indiana may enter the land to drill a well or test a well on the land for the production or attempted production of coal bed methane regardless of whether the:

(A) person is also the owner, lessee, or licensee of an owner of an interest in the surface rights in the land; and

(B) owner of the remaining rights in the land consents to the entrance and drilling.

A person that drills a well under this subdivision shall provide an accounting to the remaining or nonparticipating persons in interest in the coal bed methane estate in the land, for their respective proportionate shares of the net profits arising from the operations conducted upon the land for coal bed methane. In calculating the profits, a reduction may not be made from the gross proceeds of the production of coal bed methane,

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except for expenses that are reasonably or necessarily incurred in connection with the drilling, completion, equipping, and operation of the wells drilled upon the premises during the period in which the relationship of cotenancy existed between the person drilling the well and the person whose interest is sought to be charged with the respective proportionate part of the cost of the drilling.

(3) A person who may enter and enters land in Indiana for the purpose of exploring, prospecting, testing, surveying, or otherwise investigating the potential of the land for coal bed methane, or for the purpose of conducting operations on the land for the production of coal bed methane, is accountable for the actual damage resulting from the person's activities on the land to:

- (A) the surface of the land;
- (B) improvements to the land; or
- (C) growing crops on the land.

However, a person who enters land under this subdivision is not liable for punitive damages. This subdivision does not increase damages between a lessor and a lessee in a valid and subsisting coal bed methane lease that specifies damages if damages are not due other than damages that are expressly provided by contract between cotenants or the lessees of cotenants of a like estate in the land. This section does not authorize the location of a well for coal bed methane nearer than two hundred (200) feet to an existing house, barn, or other structure (except fences) without the express consent of the owner of the structure.

(4) The right to conduct operations for coal bed methane upon land located in Indiana includes the right to:

- (A) install and maintain physical equipment on the land; and
- (B) use the part of the surface of the land that is reasonably necessary for the operations for coal bed methane; subject to the payment of damages resulting from the installation only of the equipment specified in this subdivision.

(b) A conveyance, will, or other document that reserves or excepts the coal bed methane estate in land from the surface of the land also excepts or reserves:

- (1) the expressed rights and privileges set forth in subsection (a)(1) through (a)(4); and
- (2) any other rights naturally reserved or excepted from the

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character of the instrument in law.

SECTION 23. IC 32-23-7-10 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2010]: **Sec. 10. No surface right or any other right pertaining to coal bed methane and naturally flowing from the character of any instrument in law may be exercised if the exercise of the right:**

(1) compromises in any way the safety of current miners of coal; or

(2) has the potential to compromise in any way the safety of miners who might mine coal in the future.

SECTION 24. IC 32-23-7-11 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2010]: **Sec. 11. (a) If ownership of coal bed methane is separate from ownership of coal, no surface right or any other right pertaining to coal bed methane and naturally flowing from the character of any instrument in law may be exercised without the consent of the coal owner, a person who files an affidavit with respect to a commercially minable coal resource under IC 14-37-7-8, and the coal mine operator if exercising the right:**

(1) results in; or

(2) has the potential to result in the future in;

any diminution of a commercially minable coal resource in Indiana.

(b) For purposes of subsection (a), the use of any or a combination of the following is presumed to be among the activities that result in diminution of a commercially minable coal resource:

(1) Hydrofracturing the coal seam.

(2) Horizontal drilling in the coal seam.

(3) Any other technology that disturbs the integrity of either or both of the following:

(A) The coal seam.

(B) The strata surrounding the coal seam.

(c) An application for a permit to drill into or through one (1) or more coal seams for the purpose of testing or producing coal bed methane must be accompanied by:

(1) certification by affidavit of the applicant that upon diligent inquiry, including reference to:

(A) the record of filings maintained by the department and made by coal owners and lessees under IC 14-8-2-47; and

(B) publicly available records pertaining to thickness and

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1 depth of coal;
 2 the activities of the applicant do not and will not result in
 3 diminution of a commercially minable coal resource; or
 4 (2) written consent of the coal owner or lessee authorizing the
 5 drilling.

6 (d) If the alternative in subsection (c)(1) is used by the applicant,
 7 an applicant who provides a certification under subsection (c)(1)
 8 shall submit with the permit application proof that written notice
 9 of the permit application has been received by the owner and, if
 10 applicable, the lessee of the coal through which drilling is
 11 proposed.

12 (e) The owner and, if applicable, the lessee of the coal through
 13 which drilling is proposed may object to the issuance of the permit
 14 on the basis of diminution of a commercially minable coal resource.

15 (f) The department of natural resources shall prescribe by rule
 16 the procedure for objection under subsection (e), including a
 17 reasonable deadline for initiating the objection.

18 SECTION 25. IC 32-23-7-12 IS ADDED TO THE INDIANA
 19 CODE AS A NEW SECTION TO READ AS FOLLOWS
 20 [EFFECTIVE JULY 1, 2010]: Sec. 12. (a) In any instrument that
 21 affects land in Indiana:

22 (1) subject to subsection (b), a grant, exception, or reservation
 23 of "coal" includes a grant, exception, or reservation of the
 24 coal bed methane estate in land; and

25 (2) a grant, exception, or reservation of "oil and gas" or "gas"
 26 does not include a grant, exception, or reservation of the coal
 27 bed methane estate in land.

28 (b) The coal bed methane estate in land may be separated from
 29 the coal estate in the land by express provisions in the instrument
 30 identifying the coal bed methane estate as separate from the
 31 ownership of the coal.

32 SECTION 26. THE FOLLOWING ARE REPEALED [EFFECTIVE
 33 JULY 1, 2010]: IC 14-37-7-3; IC 14-37-7-5.

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